IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 14952 of 2004(S)
---
OA.834/2001 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONERS:
---

1. THE CHIEF STAFF OFFICER,(P&A)
HEADQUARTERS SOUTHERN NAVAL COMMAND,
WELLINGTON ISLAND P.O. KOCHI.

2. THE FLAG OFFICER COMMANDING IN CHIEF,
HEADQUARTERS SOUTHERN NAVAL COMMAND,
WELLINGTON ISLAND P.O. KOCHI.

3. UNION OF INDIA, REP. BY THE SECRETARY,
MINISTRY OF DEFENCE,RAKSHA BHAVAN, SANSAD MARG,
NEW DELHI 110 001.

4. THE GENERAL MANAGER,
NAVAL ARMAMENTS DEPOT, NAD P.O. ALUVA.

5. THE COMMANDING OFFICER,
INS VENDURUTHY, WELLINGDON ISLAND P.O.
KOCHI.

BY ADV. SRI.JOHN VARGHESE, SCGSC
SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNS

RESPONDENTS:
---

1. K.GOPAKUMAR, FIREMAN GRADE I, FIRE STATION, INS VENDURUTHY, WELLINGTON ISLAND P.O., RESIDING AT VETTIPPUZHA HOUSE, CHEMPANUKKARA, ANGAMALI SOUTH P.O., ERNAKULAM DISTRICT.

2. THE CENTRAL ADMINISTRATIVE TRIBUNAL, REPRESENTED BY THE REGISTRAR, CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.

BY ADV. SRI.N.N.SUGUNAPALAN FOR R1
SRI.T.P.M. IBRAHIMKHAN, SCGSC FOR R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXTS:

Ext.P1 true copy of the O.A.834/2001 along with Annexures filed by the 1st respondents before the 2nd respondent.

Ext.P2 true copy of the reply statement filed by the petitioners in O.A. 834/2001 before the 2nd respondent.

Ext.P3 true copy of the rejoinder filed by the 1st respondent in O.A.no.834/2001 before the 2nd respondent.

Ext.P4 true copy of the order dated 22.3.2004 in OA 834/2001 of the 2nd respondent.

**K.A.Abdul Gafoor & Antony Dominic, JJ.**
**==========**
**W.P.(C)No.14952 of 2004**
**==========**

**Dated this the 9th day of February, 2007.**

**JUDGMENT**

**Abdul Gafoor,J.**

The Chief of Staff, Naval Headquarters and four others are the petitioners. They are aggrieved by Ext.P4 order of the Central Administrative Tribunal, Ernakulam Bench whereby the order of penalty of compulsory retirement imposed on the first respondent has been set aside directing him to be reinstated in service. It is submitted that the order imposing penalty of compulsory retirement has been passed after due enquiry. Full opportunity has been afforded as enjoined by the Rules to the first respondent to defend himself. There was no illegality. Taking into account the finding of guilt entered into by the Enquiry Officer, the penalty was imposed. In such circumstances, the Tribunal ought not to have interfered with the imposition of penalty. It is further submitted that the Tribunal had interfered with the penalty as if a major penalty could be imposed only in cases arising in respect of possession of disproportionate assets, obtaining illegal gratification, misappropriation of Government property, money or stores, obtaining any valuable thing or pecuniary

advantage, falsification of Government records and similar other misconduct. The Tribunal proceeded as if unauthorised absence was not a misconduct at all. This is illegal and unjustified; it is contended. The unauthorised absence is a gross misconduct. Moreover, he had been in the habit of absenting unauthorisedly on several occasions. Five of such instances had happened prior to the misconduct of unauthorised absence alleged in this case and two later. All such seven occasions had been dealt with and punishments were imposed as is revealed by the instances noticed in paragraph 3 of Ext.P4. Of course, only minor penalties were imposed on all such occasions. The Tribunal took the view that as the disciplinary action initiated against the first respondent before and after the incident in question had been finalised imposing only minor penalty, there was no reason to impose a major penalty in this case. It was on the above reasons that the penalty has been set aside, it is contended. This approach is wrong, it is submitted. It is further submitted that when there is no illegality in the proceedings, it was not for the Tribunal invoking judicial review to find that there was no sufficient reason to impose the penalty imposed or whether punishments ought to have been imposed or not.

2. It is contended by the first respondent – delinquent that by reason of unauthorised absence, no loss was caused to the employer.

It is further submitted that though he was working as a Fireman, no incident of fire had taken place during the period of his absence. It is also submitted that there was no dishonest intention in absenting himself. It is further submitted that whenever he had been absent, he had applied for leave. In such circumstances, interference with the order of penalty by the Tribunal was proper and there is no reason at all to reverse the order of the Tribunal in this Writ Petition.

3. A reading of Ext.P4 will reveal that the entire approach of the Tribunal was that the unauthorised absence was not a misconduct. We are unable to agree with this view adopted by the Tribunal. The Tribunal took the following view as expressed in paragraph 5 of Ext.P4:

> "Recognising the distinction between an act of unauthorised nature and an act of misconduct, we hold that an act of unauthorised nature in itself would not constitute misconduct unless it is 'gross' enough and 'motivated' enough to attract such a classification. An instance of absence without prior sanction or prior intimation under certain compelling circumstances would at worst be an instance of human failure, pardonable in best of times by regularisation with displeasure and when unpardonable treated with a break in service. There is nothing 'gross' in the act of unauthorised absence as the respondents have no case that the Fireman fiddled when the ship was on fire, there is also no motive as the ground of illness has not even been questioned, far from being assailed. So, as the counsel contended, the very rationale of disciplinary action was

> open to question. A case of unauthorised absence of an individual employee, argued the counsel, would be adequately coverable under FR 17-A. We would see how. We are a trifle surprised that neither the disciplinary authority nor the appellate authority at no stage ever considered the evidence on record to evaluate if the penalty was proportionate to the act of negligence or irregularity, was without motive, and if the act itself was as such an act of misconduct".

If this view is applied, the entire Government service will be paralised as if any Officer can absent unauthorisedly without the risk of being proceeded against.

14. It is further revealed that he had been imposed with censure on 23.4.1988 and withholding of one increment for a period of three months on 29.8.1991. Another withholding of increment on 10.3.1992 for a period of one year and yet another censure on 22.1.1993 and further withholding of increment on two occasions on 16.9.1993 and 10.3.1998 and reduction in the stage of pay drawn with effect from 1.12.1998 were also imposed. All on account of unauthorised absence. Merely because the last two had been in respect of a misconduct alleged later and all the punishments so imposed are only minor, it cannot be said that the petitioners cannot proceed seriously for imposing a major penalty on account of another

instance of unauthorised absence arisen in the meanwhile. Therefore, the view taken by the Tribunal is unjustified and quite illegal..

5. Merely because there was no fire accident during a particular period, it cannot be stated that unauthorised absence of a Fireman is condonable. A Fireman is employed to meet any unforeseen circumstances and should be vigilant in his duties. Further, even if leave is at the credit of an employee, he cannot absent himself without applying for the leave. That is the paramount duty of any employee, especially in a public utility service like Fire. Moreover, leave if applied for, otherwise than due to illness, it shall be availed only on its sanction or with due permission.

6. The instances of misconduct warranting action under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules as understood by the Tribunal and as mentioned in paragraph 7 of the impugned order are in respect of a guideline issued by the Government. It does not form part of Rule 14 of the above Rules as understood by the Tribunal. Therefore, consideration in that line was also misconceived.

7. The view of the Tribunal in respect of unauthorised absence of a Fireman that the order of penalty of compulsory retirement was

perverse in the sense that no reasonable person would form the requisite opinion on the given material cannot be accepted. On any account, the view of the Tribunal cannot be supported. Accordingly, Ext.P4 is set aside and the punishment order is restored. Writ Petition is allowed.

K.A.Abdul Gafoor,
Judge.

Antony Dominic
Judge.

ess 14/2